# UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, :

:

V. : CRIM. NO. 3:99-CR-266 (RNC)

: CIVIL NO. 3:03-CV-600(RNC)

HORACE RICHARDS,

:

Defendant.

## RULING AND ORDER

Horace Richards moves to amend his 28 U.S.C. § 2255 motion to include a claim that his sentence is unconstitutional in light of <u>United States v. Booker</u>, 543 U.S. \_\_\_\_ , 125 S. Ct. 738 (2005) and <u>Blakely v. Washington</u>, 542 U.S. 296 (2004). Because neither decision applies to his sentence, the proposed amendment would be futile, and the motion to amend is therefore denied.

#### Background

In 2001, Richards pleaded guilty to a charge of conspiracy to distribute a thousand kilograms or more of marijuana and was sentenced to 262 months' imprisonment. In September 2002, the Second Circuit summarily affirmed his conviction and sentence. No petition for a writ of certiorari was filed, so the judgment became final in December 2002, when the 90-day period for filing a petition expired. See S. Ct. R. 13 (1) (2005) (petition for writ of certiorari to review judgment of United States Court of Appeals must be filed within 90 days after entry of judgment); Williams v. Artuz, 237 F.3d 147, 151 (2d Cir. 2001) (if no

certiorari petition is filed, conviction becomes final when time to seek review via certiorari expires.)

Richards moved to vacate his sentence under 28 U.S.C. § 2255, claiming that his counsel was ineffective in allowing him to plead guilty. In May 2003, his motion was denied and he appealed. Before the appeal was decided, he asked the Second Circuit for an order authorizing this court to consider a successive § 2255 motion. See Doc. # 1045. The Second Circuit responded by vacating this court's order and remanding the matter with instructions that the request be treated as a motion to amend the § 2255 motion. Id. Subsequently, Richards filed the present motion to amend.

## Discussion

Under Rule 15 of the Federal Rules of Civil Procedure, which applies to this motion, see Ching v. United States, 298 F.3d 174, 177 n.2 (2d Cir. 2002), leave to amend may be denied if the proposed amendment would be futile, see Foman v. Davis, 371 U.S. 178, 182 (1962), which is undoubtedly the case here. It is now clear that the Booker decision does not apply to cases "on collateral review where the defendant's conviction was final as of January 12, 2005, the date that Booker issued." Guzman v. United States, 404 F.3d 139, 140 (2d Cir. 2005). As just mentioned, the judgment in this case became final in December 2002. It is also clear that Blakely does not apply to cases

decided under the Federal Sentencing Guidelines. <u>See Blakely</u>, 542 U.S. at 305 n.9 (stating that the "Federal Guidelines are not before us, and we express no opinion on them.").

### Conclusion

Accordingly, the motion to amend is hereby denied, and the court adheres to its previous decision on the § 2255 motion, which is once again denied.

So ordered.

Dated at Hartford, Connecticut this 19th day of November 2005.

Robert N. Chatigny
United States District Judge